

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 12. SECRETARY OF STATE

#### PREAMBLE

**1. Sections Affected**

Article 11  
R2-12-1101  
R2-12-1102  
R2-12-1103

**Rulemaking Action**

New Article  
New Section  
New Section  
New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: Laws 2000, Ch. 210, §§ 2 and 3

Implementing statute: Laws 2000, Ch. 210, §§ 2 and 3

**3. The effective date of the rules:**

May 1, 2001

**4. A list of all previous notices published in the Register addressing the proposed rule:**

Notice of Emergency Rulemaking: 6 A.A.R. 2956, August 11, 2000

Notice of Rulemaking Docket Opening: 6 A.A.R. 2959, August 11, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4484, December 1, 2000

Notice of Emergency Rulemaking: 7 A.A.R. 672, February 2, 2001

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Scott Cancelosi  
Assistant Director, Public Services Division  
Office of the Secretary of State

Address: 1700 West Washington, 7th Floor  
Phoenix, Arizona 85007

Telephone: (602) 542-4751

Fax: (602) 542-4366

E-Mail: scancelosi@mail.sosaz.com

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The amounts notaries public were allowed to charge for their services and the amount of the surety bond a notary must purchase before being commissioned as a notary were previously set in statute. Laws 2000, Ch. 210, § 2 takes the amount of the bond out of statute and requires the Secretary of State to prescribe the amount of the bond. Laws 2000, Ch. 210, § 3 takes the fees notaries are allowed to charge out of statute and requires the Secretary of State to prescribe the amount by rule.

Until 1996, Arizona notaries were allowed to charge up to 75¢ per signature notarized. In 1996, the law was changed so that notaries could charge up to \$2 per signature notarized, oath administered, or page certified. Examples of other state requirements for notary fee's include: New Mexico, \$1 for acknowledgments and jurats; Nevada, Utah, and Colorado, \$5 for an acknowledgment or a jurat, although Nevada specifies that each additional signature being acknowledged has a charge of \$2.50; Texas, \$6 for acknowledgments and jurats, with \$1 the charge for each additional signature being acknowledged; and California, \$10 for acknowledgments and jurats.

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The Secretary of State's Office proposed the same fees contained in statute until July 18, 2000, and the same fees that were adopted by two emergency rulemakings (Notice of Emergency Rulemaking: 6 A.A.R. 2956, August 11, 2000, and Notice of Emergency Rulemaking: 7 A.A.R. 672, February 2, 2001). During the rulemaking process the Office accepted comments from interested individuals about the appropriate level of notary fees in Arizona, and accepted comments about the amount of the bond Arizona notaries must purchase in order to serve as notaries public. The amount that had been specified in statute until July 18, 2000, and the amount currently specified in the emergency rulemaking effective July 18, 2000, is \$5,000. Examples of other state requirements for notary bonds include: Nevada, a \$10,000 bond; Utah, a \$5,000 bond; and California, a \$15,000 bond. The surety bond that is required is a protection for the people for whom notaries perform notarizations.

**7. A reference to any study that the agency proposes to rely on in its evaluation or justification for the proposed rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

No specific study was made. However, the Office researched the amounts for fees and bonds for notaries in neighboring states.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

A change to the bond amount can affect those people applying for commissions as notaries public. Bonding or insurance companies usually increase their charge to the individual for a bond as the amount of the bond increases.

The fees that notaries are allowed to charge for their services affects the members of the public whom they serve. Notaries are not required to charge fees. The fees set forth in these rules are the maximum that notaries are allowed to charge. This rulemaking does not increase the fees from the current amount set by emergency rulemaking.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There are no substantive changes between the proposed rules and final rules.

Grammatical and spelling corrections include: R2-12-1101, in the definition of "Acknowledgment" two section symbols were in A.R.S. § 41-311(1), one was removed; R2-12-1101, in the definition of "Jurat", the colon was removed at the end of the sentence and a period was added; R2-12-1102, a semi-colon was added to the end of number two; and in R2-12-1103(B), the spelling of "immediatley" was corrected and the spelling of "extactly" was corrected.

**11. A summary of the principal comments and the agency response to them:**

The office received six written comments by the close of record, February 8, 2001. Three (two professional notary associations) suggested raising the notary fee to \$10; one said raise the fee to \$5; one said raise the fee "\$3 to \$5"; and one said the fees should be "increased" but did not specify an amount. No comments were received at the oral hearing on January 8, 2001.

There were very few responses from the regulated community to this rulemaking activity. Therefore the Secretary of State's Office will maintain the same fee structure for notary fees and bonds originally set in statute.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously adopted as an emergency rule?**

Notice of Emergency Rulemaking: 6 A.A.R. 2956, August 11, 2000

Notice of Emergency Rulemaking: 7 A.A.R. 672, February 2, 2001

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 12. SECRETARY OF STATE**

**ARTICLE 11. NOTARY PUBLIC BONDS AND FEES**

Section

R2-12-1101. Definitions

R2-12-1102. Notary Public Fees

R2-12-1103. Notary Public Bonds

**ARTICLE 11. NOTARY PUBLIC BONDS AND FEES**

**R2-12-1101. Definitions**

The following definitions shall apply in this Article unless the context otherwise requires:

“Acknowledgment” means the same as defined in A.R.S. § 41-311(1).

“Bond” means a surety bond to the state, with sureties approved by the clerk of the superior court in the county in which the individual is being commissioned as a notary public.

“Copy certification” means the same as defined in A.R.S. § 41-311(3).

“Credible person” means a person used to identify a signer when the signer does not have other satisfactory evidence of identity as specified in A.R.S. § 41-311(11).

“Jurat” means the same as defined in A.R.S. § 41-311(6).

“Oath” or “affirmation” means the same as defined in A.R.S. § 41-311(10).

“Satisfactory evidence of identity” means the same as defined in A.R.S. § 41-311(11).

**R2-12-1102. Notary Public Fees**

Notaries public may charge the following fees:

1. For acknowledgments, \$2 per signature;
2. For jurats, \$2 per signature;
3. For copy certifications, \$2 per page certified;
4. For oaths or affirmations without a signature, \$2.

**R2-12-1103. Notary Public Bonds**

- A.** Notaries public shall purchase a bond in the amount of \$5,000 before being commissioned as a notary public. The original bond shall be filed with the clerk of the superior court in the applicant’s county of residence. A copy of the bond shall be filed with the applicant’s application form submitted to the Secretary of State’s Office.
- B.** The bond shall contain, on its face, the oath of office for the notary public as specified in A.R.S. § 38-233(B). This oath shall be as specified in A.R.S. § 38-231. The notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the notary’s name under which the person has applied to be commissioned as a notary and exactly as the name appears on the notary application form filed with the Secretary of State’s Office.

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**PREAMBLE**

- |   |  |
|---|--|
| <b><u>1. Sections Affected</u></b><br>R4-23-102   | <b><u>Rulemaking Action</u></b><br>Amend |
| <b><u>2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b><br>Authorizing statute: A.R.S. § 32-1904(A)(1)<br>Implementing statute: A.R.S. § 32-1905 |  |
| <b><u>3. The effective date of the rules:</u></b><br>May 1, 2001  |  |
| <b><u>4. A list of all previous notices appearing in the Register addressing the proposed rule:</u></b><br>Notice of Rulemaking Docket Opening: 6 A.A.R. 2789, July 28, 2000<br>Notice of Proposed Rulemaking: 7 A.A.R. 4, January 5, 2001                    |  |
| <b><u>5. The name and address of agency personnel with whom persons may communicate regarding the rule:</u></b><br>Name: Dean Wright<br>Compliance Officer<br><br>Address: Board of Pharmacy<br>4425 West Olive Ave., Suite 140<br>Glendale, Arizona 85302    |  |

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Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@qwest.net

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board's five-year rule review in September 1997 identified Section 102 for amending. The rule addresses Board meeting location, time, place, and frequency, office location, and the Board's annual report to the governor. The rule duplicates items addressed in statute and fails to address the exclusion of office operations on approved holidays.

The rule makes necessary style, format, and grammar changes to produce a clear, concise, and understandable document. Subsection (B) is repealed because it duplicates statutory language. Subsection (D) is repealed because the Board did not think it necessary to put office address and hours of operation in rule.

The Board believes that making this rule benefits the public by clarifying the purpose of Board meetings and providing for special Board meetings.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

Not applicable

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The rule will not have an economic impact except the cost to the Board of Pharmacy and the Secretary of State for writing and publishing the rule. The changes do not impose anything new. The rule removes duplicate language and updates and clarifies existing language. The rule does not impose any new costs on small business or consumers.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

At the request of G.R.R.C. staff, the Board made minor grammar changes. The citation for authorizing statute was changed to A.R.S. § 32-1904(A)(1). The word "fiscal" is inserted before the word "year" in subsection (A) to show the statutory requirement.

**11. A summary of the principal comments and the agency response to them:**

There were no comments.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously approved as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**ARTICLE 1. ADMINISTRATION**

Section

R4-23-102. Meetings

**ARTICLE 1. ADMINISTRATION**

**R4-23-102. Meetings**

~~A. Regular: Meetings of The Board of Pharmacy for the purpose of conducting general business and interviewing applicants for license shall be held four times each~~ hold not less than four meetings per fiscal year to conduct general business and interview permit and license applicants.

~~B. Examination: The Board shall designate the time and place of its meetings for examination of applicants, at least 30 days prior to each meeting (A.R.S. § 32-1905).~~

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- ~~CB.~~ ~~Special:~~ A special ~~meetings~~ meeting of the Board of Pharmacy may be held at any time subject to the call of the President or a majority of the Board members and in compliance with the notification requirements of A.R.S. § 38-431.02.
- ~~D.~~ Location of office and office hours: The office of the State Board of Pharmacy is, unless otherwise designated, located in Phoenix, Arizona. The office shall be kept open continuously from 8:00 o'clock A.M. until 5:00 o'clock P.M. of each day, Monday through Friday.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSURE

PREAMBLE

- 1. Sections Affected**  
R9-10-122
- Rulemaking Action**  
New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 36-136(F) and 36-405(C)  
Implementing statute: A.R.S. § 36-405(C)(1) and (C)(2)
- 3. The effective date of the rules:**  
May 1, 2001
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Proposed Rulemaking: 6 A.A.R. 4087, October 27, 2000  
Notice of Rulemaking Docket Opening: 6 A.A.R. 3853, October 6, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Kathleen Phillips Rules Administrator
Address:	Department of Health Services 1740 West Adams, Suite 102 Phoenix, Arizona 85007
Telephone:	(602) 542-1264
Fax:	(602) 542-1090
or	
Name:	Mary Wiley Assistant Director
Address:	Department of Health Services Assurance and Licensure Services 1647 East Morten, Suite 220 Phoenix, Arizona 85020
Telephone:	(602) 674-4200
Fax:	(602) 861-0645
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The rule implements A.R.S. § 36-405(C)(1)-(2), which requires the Department of Health Services (Department) to collect a license application fee and an architectural drawing review fee from a health care institution. A.R.S. § 36-405(C)(1)-(2) establishes a range of license application and architectural drawing review fees that shall be collected by the Department. The Department has determined that a rule is necessary to specify the exact fee, within the range established in statute, that will be collected. The rule establishes the exact license application fee and architectural drawing review fee that the Department will collect from a health care institution.

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**7. Reference to any study that the agency relied on and its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

There will be costs associated with the rule. In the past, the Department has not collected license application fees from health care institutions because the Department determined that a rule was necessary to specify the exact fee, within the range established in statute, that will be collected. In practice, the Department has been collecting, and depositing in the State General Fund, architectural drawing review fees from health care institutions at the top of the range established in statute. The Department will incur substantial annual costs collecting and processing license application fees. Some of the Department's costs will be moderate one-time initial implementation costs, such as mailing written notification of the collection of license application fees to health care institutions and training staff in how to collect license application fees. Other costs to the Department will be annual, ongoing, and substantial and include the actual staff time collecting, processing, and depositing approximately 3,000 license application fees each year. Each business that operates a health care institution will pay a \$50.00 license application fee for an initial license and \$50.00 license application fee at the time of license renewal. However, a license application fee for a renewal license may not be imposed on an annual basis because some health care institutions only renew a license every two or three years. Neither the Department nor businesses that operate health care institutions should incur any new or additional costs in the collection of architectural drawing review fees because the Department, in practice, has been collecting those fees at the top of the statutorily authorized range and depositing the fees in the State General Fund.

The minimal cost of a license application fee to each business is offset by the substantial benefit Arizona taxpayers will realize in increased revenues to the State General Fund. The collection of license application fees shifts a portion of the State's cost of licensing and regulating health care institutions from Arizona taxpayers to the regulated health care institutions. The Department anticipates collecting and depositing in the State General Fund approximately \$148,500.00 each year in license application fees and \$15,000 in architectural drawing review fees. Monies generated from the collection of license application fees and architectural drawing review fees that are deposited in the State General Fund can be used for other purposes, as determined by the Arizona Legislature.

The Department estimates that it costs \$86.00 to process an initial license application and \$56.00 to process a renewal license application. In 1999, the Department processed 412 initial license applications, at a total approximate cost of \$35,432.00, and processed 2,558 renewal license applications, at a total approximate cost of \$143,248.00. The Department estimates that its annual costs to process initial and renewal license applications is approximately \$178,680.00.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The heading of the proposed rule incorrectly identified the affected Chapter as Chapter 5. The correct affected Chapter is Chapter 10. This typographical error has been corrected in the final rule.

**11. A summary of the principal comments and the agency response to them:**

Three public hearings were held around the state. Only one individual attended and that individual had a clarifying question, not a comment. After the Department answered the question, no comment was provided. The Department received no written comments.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their locations in the rules:**

Not applicable

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSURE**

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

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**ARTICLE 1. GENERAL**

Section

R9-10-122. ~~Reserved Fees~~

**ARTICLE 1. GENERAL**

**R9-10-122. ~~Reserved Fees~~**

- A.** An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural drawing review fee as follows:
1. Fifty dollars for a project with a cost of less than \$100,000;
  2. One hundred dollars for a project with a cost of \$100,000 but less than \$500,000; or
  3. One hundred fifty dollars for a project with a cost of \$500,000 or more.
- B.** An applicant submitting an initial application or a renewal application for a health care institution license shall submit to the Department an application fee of \$50.00.
- C.** All fees are nonrefundable except as provided in A.R.S. § 41-1077.

**NOTICE OF FINAL RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R12-4-316                          | Amend                           |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statutes: A.R.S. §§ 17-101; 17-102; 17-231(A)(3); and 17-306
- 3. The effective date of the rules:**
- The effective date for the rule is May 25, 2001. The effective date was changed from January 1, 2000, due to supplemental changes to the proposed rule language. May 25, 2001, is the Agency's best estimate of the earliest possible filing date after the Notice of Final Rulemaking is presented to the Governor's Regulatory Review Council. The effective date is included in the rule language because the rule text is also published in the Department's Fishing Regulations. Providing the effective date as a part of the rule language clarifies when rule changes become effective for the Agency's customers and stakeholders. The rules will compliment Commission Order 40: General Sport Fishing and Commission Order 42: Crustaceans and Mollusks.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 4503, November 26, 1999
- Notice of Proposed Rulemaking: 6 A.A.R. 2669, July 14, 2000
- Notice of Supplemental Proposed Rulemaking: 6 A.A.R. 4809, December 29, 2000
- Notice of Public Information: 6 A.A.R. 4837, December 29, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Mark E. Naugle<br>Manager, Rules and Risk Management  |
| Address:   | Arizona Game and Fish Department DORR<br>2221 West Greenway Road<br>Phoenix, Arizona 85023-4399 |
| Telephone: | (602) 789-3289  |
| Fax:       | (602) 789-3677  |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
- Scientific research indicates that the introduction of non-native crayfish into Arizona's managed and natural waters has had a negative impact on native species, aquatic ecosystems, and sportfish. Arizona is the only state without nat-

urally occurring crayfish. Two non-native species, the northern crayfish and the red swamp crayfish, have been introduced into Arizona waters and have caused major ecosystem impacts. Now widespread in canals, streams, ponds, and lakes, non-native crayfish have caused significant habitat damage and have negatively impacted other aquatic biota. Non-native crayfish are drastically changing Arizona's aquatic ecosystems, making them less habitable for other species.

Crayfish are detrimental to Arizona's native species, aquatic ecosystems, and sportfish. They selectively forage on invertebrates, aquatic vegetation, and various life stages of vertebrates, and they compete with fish and other aquatic species for food and shelter. In addition, their burrowing behavior degrades water quality, erodes the food base, limits vegetation growth, and makes it difficult for sight-feeding fish such as trout to feed. Major reductions in populations of invertebrates, amphibians, turtles, native fish, and some sportfish can be attributed to the introduction of crayfish. The negative impact of crayfish on sportfish and their habitats potentially reduces the number of angler days available to Arizonans and thereby reduces Agency revenues.

Live crayfish are currently available from bait stores, a few grocery markets, and pet stores. They are thought to be most commonly spread in the wild through bait-bucket introductions and the disposal of unwanted pets. The rulemaking will reduce the threat posed by non-native crayfish to Arizona's aquatic ecosystems by restricting the use of live crayfish as bait. Specifically, the rule will be amended as follows:

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs**

Amendments to this rule will help control and lessen the probability of existing and new crayfish species being released in waters where they could establish populations that compete with existing sportfish and native aquatic wildlife. With the information and data available, the Agency has determined that additional controls are necessary to better manage non-native crayfish populations in Arizona's waters. Anglers can continue to use live crayfish as bait in the same waters where captured. However, the proposed amendment will prohibit the transportation of live crayfish between bodies of water except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.

The proposed exemption area parallels the lowermost Colorado River bordering California (South of I-10 and west of US 95). Because canal and drainage systems in southwestern Arizona are interconnected with the Colorado River providing for connection between existing crayfish populations; because California allows the transport and use of live crayfish as bait on the Colorado River in California; and because other rules disallow the commercial acquisition of crayfish in Arizona for use and transport as bait and the possession of live crayfish for the pet trade, the Commission believes there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant closure of the exemption area at this time. Crayfish are common throughout the lowermost Colorado River and its interconnected waterways in the proposed exemption area. The probability of the introduction of new species of crayfish to the exemption area has been reduced by other rule modifications.

Additionally, on the Colorado River, an Arizona resident's fishing license can be validated with a California stamp and a California resident's license can be validated with an Arizona stamp, entitling the bearer to the benefits and limitations of each state's fishing rules and regulations. A ban on the possession, transportation, or importation of live crayfish in this shared border area of Arizona would thus result in enforcement confusion between California and Arizona, and would cause unnecessary confusion on the part of anglers fishing in the waters of the Colorado River.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Fernandez, P.J., and P.C. Rosen. 1996. Effects of the Introduced Crayfish *Orconectes virilis* on Native Aquatic Herpetofauna in Arizona. Final Report, IIPAM Project No. I94054. Heritage Program, Arizona Game and Fish Department, Phoenix, AZ.

Childs, M., Arizona Game and Fish Department, Research Branch. 1999. Literature Review and Field and Laboratory Studies of Northern Crayfish, *Orconectes virilis*, in Arizona. IIPAM project No. QGR 6912. Heritage Program, Arizona Game and Fish Department, Phoenix, AZ.

Lodges, D.M., C.A. Taylor, D.M. Holdich, and J. Skurdal. 2000. Nonindigenous Crayfish Threaten North American Freshwater Biodiversity. Lessons from Europe. American Fisheries Society 25(8): 7-20.

A person may review or obtain copies of these reports by contacting:

Name: Mark E. Naugle  
Manager, Rules and Risk Management

Address: Arizona Game and Fish Department, DORR  
2221 West Greenway Road  
Phoenix, Arizona 85023

Telephone: (602) 789-3289

Notices of Final Rulemaking

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

Individuals directly affected by the proposed rulemaking include crayfish bait anglers, crayfish consumers, bait dealers, the public, and aquatic researchers. There will be no direct cost to the agency, and any costs incurred by persons affected by the proposed rulemaking will be minimal.

Under the supplemental proposed rulemaking, anglers will be allowed to use live crayfish as bait only in the waters where taken, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico. In waters outside the exemption area where crayfish are not available for anglers to use onsite, anglers can continue to use dead crayfish or other live bait, such as minnows, night crawlers, and waterdogs (juvenile salamanders). The cost to purchase or catch alternative live baits is the same as the cost to catch or purchase live crayfish.

Although live crayfish are not regularly stocked at most bait stores, some bait dealers will also be affected by the proposed rulemaking. Currently, less than 35% of bait shops carry live crayfish. As an alternative, frozen crayfish could be sold as bait. In addition, the shops could compensate for any lost sales of live crayfish by selling crayfish traps, nets, or other implements so the anglers could catch their own at the site.

Pet stores sell only a limited number of live crayfish as bait. As an alternative to live crayfish, frozen or freshly killed crayfish could be sold by pet stores as bait. This could compensate for any loss of sales from crayfish sold as live bait.

The rulemaking will benefit sport anglers, the general public, and aquatic researchers by helping to slow the spread of non-native crayfish in managed and natural waters, by protecting existing sportfish and aquatic ecosystems, and by bringing awareness to the issue of aquatic invasive species.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The original Notice of Proposed Rulemaking, published at 6 A.A.R. 2669, July 14, 2000, contained rule language that would have imposed a statewide ban on the possession, transportation, and importation of live crayfish for use as bait. At its October 21, 2000, meeting, the Arizona Game and Fish Commission directed the Department to modify the final rule language to include an exemption pertaining to the possession and transportation of live crayfish in the Yuma area. In summary, the possession, transportation, or importation of live crayfish will be prohibited statewide, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico. This exemption was incorporated into the supplemental proposed rule language for R12-4-316, and a Notice of Supplemental Proposed Rulemaking was filed with the Secretary of State on December 8, 2000. The Notice of Supplemental Proposed Rulemaking was published in 6 A.A.R. 4809, December 29, 2000, and additional public comment was taken on the changes to the text of R12-4-316. The comment period was closed on February 24, 2001, when the Notice of Final Rulemaking containing the Yuma area exemption was approved by the Commission.

The approved exemption area parallels the lowermost Colorado River bordering California (South of I-10 and west of US 95). Because canal and drainage systems in southwestern Arizona are interconnected with the Colorado River providing for connection between existing crayfish populations; because California allows the transport and use of live crayfish as bait on the Colorado River in California; and because other rules disallow the commercial acquisition of crayfish in Arizona for use and transport as bait and the possession of live crayfish for the pet trade, the Commission believes there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant closure of the exemption area at this time. Crayfish are common throughout the lowermost Colorado River and its interconnected waterways in the approved exemption area. The probability of the introduction of new species of crayfish to the area has been reduced by other rule modifications.

Additionally, on the Colorado River, an Arizona resident's fishing license can be validated with a California stamp and a California resident's license can be validated with an Arizona stamp, entitling the bearer to the benefits and limitations of each state's fishing rules and regulations. A ban on the possession, transportation, or importation of live crayfish in this shared border area of Arizona would result in enforcement confusion between California and Arizona, and would cause unnecessary confusion on the part of anglers fishing in the waters of the Colorado River.

Minor, nonsubstantive stylistic changes were also made to the rule language to make it consistent with required rule-making language and style.

**11. A summary of the principal comments and the agency response to them:**

This explanatory statement addresses oral and written comments and arguments received regarding the rulemaking. Comments both pro and con were numbered in the order received or evaluated.

- A. This portion of the explanatory statement addresses oral and written comments and arguments received during the period of June 17, 2000, to October 21, 2000.

1. **Argument:** There were 91 written and 15 oral comments in support of the Arizona Game and Fish Commission proposed rulemaking (Comments 1-22, 24-25, 27-30, 32-67, 73, 93-101, 102-114, 116-117, 120, and 122). Commenters included:

- Trout Unlimited, AZ State Council
- The Desert Flycasters
- Arizona Flycasters Club
- Northern Arizona Flycasters
- Heritage Public Advisory Committee
- Arizona State University, Department of Life Sciences
- Arizona State University, Department of Biology
- University of Arizona, Department of Entomology
- University of Arizona, Department of Ecology and Evolutionary Biology
- University of Arizona, College of Agriculture
- University of Illinois, Center for Aquatic Ecology
- Grand Canyon University, Department of Biology
- Grand Canyon University, College of Science and Allied Health
- The Nature Conservancy, Arizona Chapter
- New York Zoological Society
- Tucson Herpetological Society
- Arizona Herpetological Society
- Arizona Sonora Desert Museum
- U.S. Department of the Interior, Bureau of Land Management, Arizona State Office, Phoenix, AZ
- U.S. Department of the Interior, U.S. Fish and Wildlife Service, Cibola National Wildlife Refuge, AZ
- U.S. Department of the Interior, USFWS, Phoenix, AZ
- U.S. Department of the Interior, USFWS, AZ Fishery Resources Office
- U.S. Department of the Interior, National Park Service, Tucson, AZ
- U.S. Department of the Interior, National Park Service, Grand Canyon National Park, AZ
- U.S. Department of Agriculture, Forest Service, Apache/Sitgreaves, AZ
- Pima County Flood Control District, Tucson, AZ
- Chemehuevi Indian Tribe, Environmental/Agricultural Department, Havasu Lake, California
- State of Nevada, Division of Wildlife
- Wisconsin State Bureau Of Endangered Resources
- Audubon Institute, Louisiana
- Bucknell University, PA, Department of Biology
- Southwest Declining Amphibian Populations Task Force
- Grand Canyon Region Native Fish Work Group
- Southwest Walleye Anglers
- Arizona residents from Flagstaff, Mesa, Page, Patagonia, Payson, Peoria, Phoenix, Pine, Roosevelt, Scottsdale, Snowflake, Tempe, and Tucson.

These comments generally supported any regulation reasonably calculated to eliminate or at least reduce the spread of non-native crayfish in Arizona. These comments expressed concern about the devastating effect crayfish have had on sportfish, aquatic ecosystems, water quality, and native species (fish, amphibians, snails, clams, reptiles, and insects). Many of these comments cited scientific data and research, as well as anecdotal evidence of the widespread damage crayfish have caused, especially in streams.

**Evaluation:** The Commission agrees. Research by Agency biologists and other scientists concur with the comments received. The rule changes will help prevent the spread of non-native crayfish (both existing and new species) in Arizona and will benefit sportfish, native fish, other aquatic species, and aquatic ecosystems.

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2. **Argument:** There was one comment supporting rulemaking that prohibited the live transport of crayfish for consumption (Comment 46).

**Evaluation:** The Commission agrees. Crayfish intended for human consumption are quickly and easily processed (purged, killed, cooked, and packaged) in the field before being transported home.

3. **Argument:** There was one comment suggesting that rulemaking should allow crayfish to be used as live bait in the same waters where taken (Comment 45).

**Evaluation:** The Commission agrees. The rulemaking allows anglers to continue using live crayfish as bait at the waters where captured.

4. **Argument:** There were 10 comments opposing rulemaking that prohibits the transport of dead or live crayfish from the place of capture to a residence. Five of the comments received were on a form letter (Comments 79-86, 90, and 91).

**Evaluation:** The Commission does not agree. Most of these comments (7) resulted from an erroneous newspaper article that stated that the proposed rulemaking would prohibit consumers from transporting crayfish home, requiring, instead, that the crayfish be eaten at the place of capture. This is not the case. The Agency's proposed rulemaking will allow unlimited numbers of dead crayfish to be transported home or elsewhere.

5. **Argument:** There were five comments (three from the same individual) and one petition, opposing any rulemaking or regulation changes (Comments 68-72 and 90).

**Evaluation:** The Commission does not agree. The rulemaking is reasonable, feasible, prudent, and benefits anglers, sport and native fish, native species, and aquatic ecosystems.

6. **Argument:** There were eight comments (all form letters), promoting the movement of live crayfish between the waters within Central Arizona for the purpose of angling (Comments 74-78, 88, 89, and 119).

**Evaluation:** The Commission does not agree. The exemption that these anglers are asking for is in an area where there is greater biological risk for the spread of crayfish to crayfish-free aquatic ecosystems. Moving live crayfish between the waters of Central Arizona could contribute to the spread of existing non-native crayfish species, or facilitate the spread of a more destructive species throughout the state. In addition to the accidental or intentional spread of new species, transporting live crayfish could facilitate the spread of other non-native, invasive species (such as zebra mussels and giant salvinia), fish pathogens, or parasites.

7. **Argument:** There were two written comments that proposed modifying rulemaking to allow for the transport of live crayfish between waters in a specific region of the state: The portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico (Comments 73 and 101).

**Evaluation:** The Commission agrees. The proposed exemption area parallels the lowermost Colorado River bordering California (South of I-10 and west of US 95). Because canal and drainage systems in southwestern Arizona are interconnected with the Colorado River providing for connection between existing crayfish populations; because California allows the transport and use of live crayfish as bait on the Colorado River in California; and because other rules disallow the commercial acquisition of crayfish in Arizona for use and transport as bait and the possession of live crayfish for the pet trade, the Commission believes there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant closure of the exemption area at this time. Crayfish are common throughout the lowermost Colorado River and its interconnected waterways in the proposed exemption area. The probability of the introduction of new species of crayfish to the area has been reduced by other rule modifications.

Additionally, on the Colorado River, an Arizona resident's fishing license can be validated with a California stamp and a California resident's license can be validated with an Arizona stamp, entitling the bearer to the benefits and limitations of each state's fishing rules and regulations. A ban on the possession, transportation, or importation of live crayfish in this shared border area of Arizona would result in enforcement confusion between California and Arizona, and would cause unnecessary confusion on the part of anglers fishing in the waters of the Colorado River.

- B. This portion of the explanatory statement addresses oral and written comments and arguments received during the Supplemental Proposed Rulemaking period from October 22, 2000, to February 24, 2001.

1. **Argument:** There were 23 written comments that argued that the proposed change allowing for an exemption area for the lowermost Colorado River is inappropriate. The following is a summary of the reasons cited in these arguments: Research has demonstrated the rapidity with which crayfish can dominate and destroy aquatic ecosystems; the exemption is unenforceable; all it takes is one careless person to spread the problem to other places. (Comments 121 and 124-146).

**Evaluation:** The Commission does not agree. The proposed exemption area parallels the lowermost Colorado River bordering California (South of I-10 and west of US 95). Because canal and drainage systems in southwestern Arizona are interconnected with the Colorado River providing for connection between existing crayfish populations; because California allows the transport and use of live crayfish as bait on the Colorado River in California; and because other rules disallow the commercial acquisition of crayfish in Arizona for use and trans-

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port as bait and the possession of live crayfish for the pet trade, the Commission believes there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant closure of the exemption area at this time. Crayfish are common throughout the lowermost Colorado River and its interconnected waterways in the proposed exemption area. The probability of the introduction of new species of crayfish to the area has been reduced by other rule modifications.

Additionally, on the Colorado River, an Arizona resident's fishing license can be validated with a California stamp and a California resident's license can be validated with an Arizona stamp, entitling the bearer to the benefits and limitations of each state's fishing rules and regulations. A ban on the possession, transportation, and importation of live crayfish in this shared border area of Arizona would result in enforcement confusion between California and Arizona, and would cause unnecessary confusion on the part of anglers fishing in the waters of the Colorado River.

- 2. Argument:** There was one written comment that supported the proposed exemption area (Comment 122).

**Evaluation:** The Commission agrees. Because the Yuma exemption waters are apparently a closed system, the Commission believes that there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant closure.

- 3. Argument:** There was one written comment that recommended that the exemption be applied to transportation of crayfish for consumption (Comment 123).

**Evaluation:** Within the exemption area, crayfish may be transported live. If the respondent is suggesting live transport throughout Arizona (beyond the proposed exemption area), the Commission disagrees with the premise. Crayfish, once purged, can be transported on ice to the location where they are to be prepared for consumption. Transportation for consumption would not differ from transportation for any other reason. The Commission has acted to constrain the commercial trade in live crayfish, allowing their live delivery in Arizona to terminal markets (such as restaurants, with the requirement that they be sold dead) in order to minimize the transport of undesired species among locations. The proposed rule, which prohibits the live transport away from a water where captured (except within the proposed exemption area), parallels the Commission's requirements upon commercial trade. This regulation minimizes the potential for distribution of crayfish to waters where they are not yet established, and minimizes the importation and distribution of additional species of crayfish not currently present in Arizona.

- 4. Argument:** There was one written comment from the U.S. Fish and Wildlife Service, Southwestern Region (AZ, NM, TX, OK), which urged the Department to implement restrictions on the sale, possession, or live transport of crayfish. It is the US Fish and Wildlife Service's objective to prevent and control invasive plant and animal species that severely impact the lands and waters of the United States. The Service recognizes that specific crayfish species are already widely distributed in southwestern Arizona waters, including national wildlife refuges, and they acknowledge that there is no known feasible way to control or eliminate this nonnative species from these waters. Nevertheless, they urge the Department to consider active efforts to 1) preclude the further dispersal of existing crayfish species, 2) to prevent the introduction of other crayfish species, and 3) where feasible, to consider eradication of existing populations from selected sensitive sites that have already been invaded (Comment 128).

**Evaluation:** The Commission agrees. The Commission has already recommended amendments to R12-4-313, R12-4-406, R12-4-407, and R12-4-411 that severely limit the potential for the importation of new species of crayfish. Amendments to these rules also prohibit the commercial importation of crayfish for use as live bait and severely limit the possession of live crayfish. Existing Commission Order 42 allows licensed anglers to use crayfish as bait at the site where taken and prohibits the live transport of crayfish away from that site, with the exception of southwestern Arizona. The proposed amendment to R12-4-316 places the restrictions contained in Commission Order 42 in rule with an exemption for southwestern Arizona. The proposed exemption area parallels the lowermost Colorado River bordering California (South of I-10 and west of US 95). Because canal and drainage systems in southwestern Arizona are interconnected with the Colorado River providing for connection between existing crayfish populations; because California allows the transport and use of live crayfish as bait on the Colorado River in California; and because other rules disallow the commercial acquisition of crayfish in Arizona for use and transport as bait and the possession of live crayfish for the pet trade, the Commission believes there is not a sufficient risk to the sportfish, native species, and aquatic ecosystems of the rest of Arizona to warrant the closure of the exemption area at this time. Crayfish are common throughout the lowermost Colorado River and its interconnected waterways in the proposed exemption area. The probability of the introduction of new species of crayfish to the exemption area within Arizona has been reduced by other recommended rule modifications. Live transport of crayfish from the exemption area to other areas of the state would be precluded by the proposed amendment to R12-4-316.

Additionally, on the Colorado River, an Arizona resident's fishing license can be validated with a California stamp and a California resident's license can be validated with an Arizona stamp, entitling the bearer to the benefits and limitations of each state's fishing rules and regulations. A ban on the possession, transportation, or importation of live crayfish in this shared border area of Arizona would thus result in enforcement confusion between California and Arizona, and would cause unnecessary confusion on the part of anglers fishing in the waters of the Colorado River.

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**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

Section

R12-4-316. Possession, Transportation, ~~or and~~ Importation of Live Baitfish, Crayfish, ~~or and~~ Waterdogs

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

**R12-4-316. Possession, Transportation, ~~or and~~ Importation of Live Baitfish, Crayfish, ~~or and~~ Waterdogs**

- A. ~~A person may possess live~~ Live baitfish, crayfish, ~~or and~~ waterdogs ~~may be possessed alive~~ for use as live bait only in accordance with ~~the restrictions of this Section rule~~ and R12-4-313.
- B. ~~A person may possess or transport the~~ The following live baitfish ~~may be possessed and transported alive~~ for personal use as live bait. ~~A person~~ Persons possessing a valid Arizona fishing license may import these live baitfish from California and Nevada without accompanying documentation certifying the fish are free of disease, ~~or they may import these live baitfish from any other state with accompanying documentation certifying if they have in possession certification that the fish are free of Furunculosis.~~
1. Fathead minnow; (*Pimephales promelas*);
  2. Mosquitofish; (*Gambusia affinis*);
  3. Red shiner; (*Notropis lutrensis*);
  4. Threadfin shad; (*Dorosoma petenense*);
  5. Golden shiners (*Notemigonus crysoleucas*); and
  6. Goldfish (*Carassius auratus*).
- C. ~~A person~~ Persons possessing a valid Arizona fishing license may import, transport, ~~or and~~ possess live waterdogs for personal use as bait, except in ~~the that~~ portion of Santa Cruz County lying east and south of State Highway 82 or ~~the that~~ portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- D. ~~A person~~ Persons possessing a valid Arizona fishing license ~~may~~ shall not import, transport, move between waters, or and possess live crayfish for personal use as live bait except as allowed in 12 A.A.C. 4, Article 4, and except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.
- E. A person may trap or capture live crayfish as provided in R12-4-313. A person may use live crayfish as bait only in the body of water where trapped or captured, not in an adjacent body of water, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern international boundary with Mexico.
- E. A person shall not transport crayfish alive from the site where taken except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.
- G. This rule is effective May 25, 2001.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION

PREAMBLE

- 1. Sections Affected**  
R17-4-265
- Rulemaking Action**  
Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366  
Implementing statutes: A.R.S. Title 28, Chapter 9, Article 8; A.R.S. §§ 5-321; 28-304; 28-1764; 42-1204; 42-1215; and 42-1231
- 3. The effective date of the rules:**  
May 1, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 6 A.A.R. 4274, November 13, 2000  
Notice of Proposed Rulemaking: 7 A.A.R. 180, January 12, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Ellen Damron  
Rules Analyst  
  
Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, Arizona 85014-5017  
  
Telephone: (602) 712-6722  
Fax: (602) 241-1624  
E-mail: edamron@dot.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**  
R17-4-265 was originally promulgated to establish a minimum value for privately owned vehicles sold and transferred between individuals. An emergency rule was adopted effective June 29, 1984 as prescribed under A.R.S. § 41-1003 (old numbering system). The regular rule was completed in October 1984. The underlying statute was repealed in 1986, removing the necessity for the rule. Review of this rule was included in the five-year review report (F-98-0401) approved by the Governor's Regulatory Review Council on May 5, 1998.
- 7. A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**  
This final rulemaking is a repeal exempt under A.R.S. § 41-1055(D).
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
None, except for using a shorter format for the final rule that is permitted by the rules of the Office of the Secretary of State.
- 11. A summary of the principal comments and the agency response to them:**  
Not applicable

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**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously adopted as an emergency rule?**

This rule was an emergency rule as provided in statute. The emergency rule was cited in the *Digest*, the predecessor to the *Register*:

4 A.A.D. 113, August 1, 1984

The permanent rule, effective October 1, 1984, is cited only in a listing, "Permanent Rules":

4 A.A.D. 161, November 1, 1984.

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION**

**ARTICLE 2. TITLES AND REGISTRATION**

Section

R17-4-265. ~~Minimum value for vehicles for the purpose of the vehicle transfer tax~~ Repealed

**ARTICLE 2. TITLES AND REGISTRATION**

**R17-4-265. Minimum value for vehicles for the purpose of the vehicle transfer tax Repealed**

**A. Vehicle minimum value:**

1. ~~For the purposes of ensuring that the sales price on which tax is levied is correct, the registering officer shall compare the dollar value of the consideration exchanged between the transferee and the transferor as shown on the Affidavit of Sales Price with a generally accepted and published value guide utilized by the vehicle dealer industry. The value guides shall be selected by the Director for use by the registering officer. The most current issue of the value guides which are available on the market shall be used for reference by the registering officer.~~
2. ~~The minimum value to be referred to for comparison purposes by the registering officer is "used wholesale" or "average trade-in value". If the value guide which lists the vehicle does not list values in the above terms, the registering officer shall refer to "average price" value. If the value guide which lists the vehicle does not list values in terms of the "average price", the registering officer shall refer to "price comparable to market value". If there is no generally accepted value guide utilized by the vehicle dealer industry which lists the vehicle, the value shall be established by reference to the Affidavit of Sales Price and any other evidence of value on which responsible persons are accustomed to relying on in the conduct of serious matters.~~

**B. Hearings:**

1. ~~Any taxpayer who contests the value attributed to the vehicle by the registering officer may request an informal reconsideration of the tax assessment.~~
2. ~~If the taxpayer contests the outcome of the informal reconsideration, the taxpayer may request a hearing subject to the provisions of administrative rules R17-4-901 and R17-4-902.~~
3. ~~The request for a hearing must be received within thirty (30) days of the application date for transfer of ownership. All requests for a hearing must be in writing and sent or hand delivered to the Executive Hearing Office, Motor Vehicle Division, Room 202, 1801 West Jefferson Street, Phoenix, Arizona 85007.~~

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**PREAMBLE**

**1. Sections Affected**

R20-4-207

**Rulemaking Action**

Amend

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**2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-181(1), 6-181(4), 6-181(7), 6-181(9), and 6-189

**3. The effective date of the rules:**

May 4, 2001

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 1811, May 19, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4312, November 17, 2000

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John P. Hudock

Address: 2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

This rule governs the organization and regulation of state-chartered banks. Specifically, R20-4-207 describes the process for obtaining the Superintendent's approval for a bank's issuance of capital obligations. The Department proposes to amend R20-4-207 to reconcile it with federal regulations found at 12 CFR Part 325, Appendix A.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

The Department did not rely on any study as an evaluator or justification for the rule.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

**A. The Banking Department**

This proceeding will not increase the income of the Department. The expense of the proceeding is a normal operating expense of the Department. No new employees will be required to enforce the revised rule. The Department expects to benefit from the increased ease of communication with banks resulting from the rule being rewritten in plain English.

**B. Other Public Agencies**

The State will incur normal publishing costs incident to rulemaking.

**C. Private Persons and Businesses Directly Affected**

Costs of services will not increase to any measurable degree. Businesses directly affected will realize the benefit of the increased clarity of R20-4-207.

**D. Consumers**

No measurable effect on consumers is expected.

**E. Private and Public Employment**

There is no measurable effect on private and public employment.

**F. State Revenues**

This rulemaking will not change state revenues.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Council staff made several suggestions to streamline the writing of the revised rule and clarify its meaning. The Department has used those suggestions to change the text of the proposed rule, transforming it into the text contained in this Notice of Final Rulemaking. None of the changes between the proposed rule and the final rule have any sub-

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stantive effect on the compliance requirements imposed by the rule. Rather, they have the effect of clarifying the rule and making it easier to understand the steps required for compliance.

**11. A summary of the principal comments and the agency response to them:**

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. In addition, the Department solicited comment from the regulated community before publishing the Notice of Proposed Rulemaking. However, no comments were received and no arguments against adoption have been raised.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

There is no material incorporated by reference in the final rule.

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**ARTICLE 2. BANK ORGANIZATION AND REGULATION**

Section

R20-4-207. Capital Obligations —A.R.S. § 6-189

**ARTICLE 2. BANK ORGANIZATION AND REGULATION**

**R20-4-207. Capital Obligations —A.R.S. § 6-189**

- A. An applicant for a Superintendent's order of approval to issue a capital obligation shall submit the following documents to the Superintendent, and shall not issue any capital obligation before the Superintendent issues the order of approval. The required documents are: are required to be submitted prior to approval by the superintendent of the issuance of capital obligations:
1. A certified Certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation obligations;
  2. A copy Copy of the agreement underlying the capital obligation; agreement;
  3. A copy Copy of the note or debenture intended to represent the capital obligation; and form;
  4. A copy of the prospectus Prospectus, if any, proposed for use to be used in the sale of the capital obligation.
- B. Each document evidencing a capital obligation Capital obligations shall:
1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
  2. Have a maturity provision that either:
    - a. Gives the obligation a maturity of at least 5 years, or
    - b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least 5 years. The restriction on maturity stated in this subsection an original maturity of seven years or more, provided that this restriction on maturity does shall not apply to any obligation that which otherwise meets all the requirements of this rule if and with respect to which the Superintendent superintendent has determines determined that exigent circumstances require the issuance of the such obligation without regard to any the restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.
  3. Have a principal amount of at least \$500.00.
  4. State expressly on its face that the obligation:
    - a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
    - b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
  4. Be unsecured.
  5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Superintendent's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.
  7. 6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution that capital obligations of the bank are an unsecured indebtedness of the bank subordinate to the

**Notices of Final Rulemaking**

~~claims of depositors and all other creditors of the bank regardless of whether the claims arose before or after the issuance of the note or debenture representing the capital obligation.~~

~~5.7.~~ State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation ~~obligations~~.

~~6. State that it is ineligible as collateral for a loan from the issuing bank except as provided in A.R.S. § 6-354.~~

- C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Superintendent. ~~The Superintendent~~ ~~superintendent~~ which may grant ~~be granted~~ that authority in the ~~his~~ initial order of approval or in a ~~by later~~ subsequent order of approval.